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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/629,557      | 07/30/2003  | Catherine Poirot     | 0548-1018           | 6514             |

466 7590 12/15/2005  
YOUNG & THOMPSON  
745 SOUTH 23RD STREET  
2ND FLOOR  
ARLINGTON, VA 22202

EXAMINER

NAGPAUL, JYOTI

ART UNIT PAPER NUMBER

1743

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/629,557

**Applicant(s)**

POIROT, CATHERINE

**Examiner**

Jyoti Nagpaul

**Art Unit**

1743

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 24-26 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1,5-15,17-21 and 24-26** are rejected under 35 U.S.C. 102(b) as being anticipated by Baker.

Baker teaches a biological incubator for continuous light microscopic observation. The apparatus comprises walls defining a work space (11), characterized in that it comprises an optical device placed outside the work space and allowing observation of a sample in at least one zone of the workspace via a transparent window (25) that is integral with one of the walls. (See Figures 1-3) (See abstract) The apparatus further comprises a plate/culture dish (19) for receiving the sample in the observation zone of the workspace. The plate/culture dish (19) comprises a first transparent window (25) for illuminating and/or observing the sample. The apparatus further teaches that the floor of the workspace comprises one or more zones provided with temperature regulating means (40) for thermostating to a temperature. Baker teaches the plate/culture dish is provided with temperature regulating means (40) to fix the temperature at its surface. The apparatus further comprises the optical observation device comprises illumination means for illuminating the sample in the observation zone and autofocusing camera allowing a sample placed in the zone to be observed. Baker

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teaches, "the present invention overcomes all the aforementioned problems by providing an incubator having a miniature environment chamber that is able to continuously maintain a gaseous environment of high humidity and controlled temperature around a tissue culture dish situated, for example, on a microscope stage. It is an object of the present invention to provide a miniature incubator that allows continuous observation of cell cultures in a tissue culture dish contained in the incubator, at low or medium objective lens power, using either an upright or inverted microscope, and observation at high objective lens power using an inverted microscope. It is another object of this invention to provide a miniature incubator that permits continuous observation of a cell culture with video equipment for the purpose of computerized image analysis and cell tracking." (See Col. 2, Lines 11-27) The apparatus further comprises in that all or a portion of the illumination means and/or collecting means are located behind one or more windows distinct from the first window and integral with at least one of the walls, in particular the upper wall. Baker teaches, "having an alternate cover located thereon, illustrating a preferred method for maintaining a sealed, preselected environmental atmosphere in a closed chamber surrounding the culture dish while permitting a substantially high-power microscope lens to pass through the cover to a close proximity of the upper surface of the culture dish, a culture dish being shown in phantom to illustrate this particular feature, and illustrating an alternate method for maintaining controlled temperature environment within the incubator." (See Col. 2, Lines 64-68 to Col. 3, Lines 1-6) The apparatus further comprises a sample gassing zone comprises a gas inlet (31), a chamber (36) for

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confining gas and a connection device (33) connecting the gas inlet (30) to the chamber (36). Baker teaches the walls defining the work space are flat and constituted by smooth washable material that are resistant to cleaning products and the floor is constituted by one or more elements that can be dismantled and are disposable or sterilizable. (See Col. 1, Lines 25-66) Baker further teaches an observation screen (50) integral with one of the walls defining the workspace. The screen (50) allows the images collected by the light collecting means to be viewed. (See Col.4, Lines 35-37) Baker further teaches in that the connection device (33) connecting the gas inlet (30) to the chamber (36) comprises a protective flange (16) to protect the gas inlet from splashes.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. **Claims 2-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker.

Refer above for the teachings of Baker.

Baker fails to explicitly teach the temperature regulating means thermostats to a temperature in the range 20 degrees Celsius to 45 degrees Celsius and the temperature at the surface of the plate is between 20 degrees Celsius to 45 degrees Celsius.

With respect to Claims 2-4, It would have been obvious to one of the ordinary skill in the art to modify Baker such that the temperature regulating means thermostats to a temperature in the range 20 degrees Celsius to 45 degrees Celsius and the temperature at the surface of the plate is between 20 degrees Celsius to 45 degrees Celsius in order to achieve optimal conditions for the sample cells.

***Allowable Subject Matter***

6. **Claims 22-23** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior art fails to teach or fairly suggest a data capture means comprise a touch sensitive keypad integral with the floor defining the work space and a track pad being integral with the floor and the pointer being able to activate predefined keys appearing on the screen.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700